UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Washington, D.C. 20230

January 11, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Letter to Chairman Kennard in CC Docket Number 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47. C.F.R. § 1.1206(b)(1), enclosed you will find two copies of the *ex parte* letter from Assistant Secretary Larry Irving, National Telecommunications and Information Administration, to Chairman William E. Kennard in the above-referenced proceeding. The original was hand-delivered to Chairman Kennard and copies have been hand-delivered to each of the Commissioners and Larry Strickling, Chief of the Common Carrier Bureau.

Please direct any questions you may have regarding this filing to the undersigned. Thank you for your cooperation.

Respectfully submitted,

Kathy D. Smith
Acting Chief Counsel

Enclosures

cc: The Honorable William E. Kennard
The Honorable Harold Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
Larry Strickling, Chief, Common Carrier Bureau

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications and Information
Washington, D.C. 20230

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EX PARTE OR LATE FILED

The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte** -- Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Chairman Kennard,

In the above-captioned proceeding, the Commission intends to specify the conditions under which incumbent local exchange carriers (ILECs) may provide advanced services, such as digital subscriber line (DSL) services, free from extensive government regulation. As you well know, the Administration strongly supports the rapid, efficient deployment of broadband services to all Americans, so that our nation can continue to reap the fruits of the information revolution. As Vice President Gore noted recently, "[with] 52,000 more Americans logging on for the first time every single day, the Internet is remaking the way we live, the way we learn, the way we work."[1/] The Vice President emphasized that to maximize the Internet's potential to create new jobs and business opportunities, to improve the delivery of education and health care, and to better the lives of the American people, we must ensure deployment of the broadband infrastructure on which the Internet depends.[2/]

The Administration has long recognized, moreover, that "[o]ne of the most effective ways to promote investments in our nation's information infrastructure is to introduce or further expand competition in communications and information markets."[3/] Last November, President Clinton directed Commerce Secretary Daley to work with the Commission and

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1/ Remarks of the President and Vice President at Electronic Commerce Event at 2 (Nov. 30, 1998), <http://www.whitehouse.gov/WH/New/html/19981130-19675.html>.

2/ Id. at 3.

3/ U.S. Department of Commerce, Information Infrastructure Task Force, The National Information Infrastructure: Agenda for Action 7 (Sept. 1993). Competition will also reduce advanced service prices over time, thereby making such services affordable for more Americans and promoting important universal service goals.

others "to promote greater competition to bring advanced high-speed connections into our homes and small businesses, to ensure that the Internet continues to evolve in ways that will benefit all our people."[4/] This belief in competition as the engine of infrastructure investment is embodied in the Telecommunications Act of 1996 (1996 Act). Although Congress therein established the goal of accelerating deployment of advanced services, it chose to achieve that objective "by opening all telecommunications markets to competition."[5/]

In its August Order in this proceeding, the Commission issued several decisions that will advance the procompetitive goals of the 1996 Act. First, and foremost, it ruled that the fundamental market-opening provisions of the 1996 Act -- codified in section 251(c) of the Communications Act (Act)[6/] -- are applicable to advanced data services, as well as to traditional voice offerings.[7/] Second, the Commission concluded that section 706 of the 1996 Act does not give the agency independent authority to forbear from applying those core provisions of the Act to ILECs, even if the objective is to stimulate deployment of advanced services.[8/] Finally, the Commission determined that because the ILECs' DSL services are retail telecommunications offerings to non-carriers, they must be made available for resale at discounted rates pursuant to section 251(c)(4) of the Act.[9/]

4/ Remarks of the President and Vice President, supra note 1, at 6.

5/ H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996), reprinted in 1996 U.S.C.C.A.N. 124 (Conference Report). As NTIA noted in its earlier comments to the Commission on these issues, even the deregulatory provisions of the 1996 Act explicitly link regulatory relief to the presence of competition in the markets implicated. See Letter from Larry Irving, NTIA, to Chairman William E. Kennard, CC Docket Nos. 98-91, 98-26, and 98-11, at 2 and n.4 (filed July 17, 1998) (NTIA July Letter).

6/ Section 251(c)(2), (3), and (4) impose certain interconnection, unbundling, and resale obligations on ILECs. See 47 U.S.C. § 251(c)(2), (3), (4). For convenience, all references to the 1996 Act in this filing will cite to the relevant provisions in the United States Code.

7/ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, ¶¶ 40-49 (rel. Aug. 7, 1998) (Order and Notice).

8/ Id. ¶¶ 69-79. Any forbearance decision must instead employ the standards set forth in section 10 of the 1996 Act, 47 U.S.C. § 160. Under no circumstances should the Commission take any action pursuant to section 706 that would reduce or that could be used to avoid a firm's universal service obligations under section 254.

9/ Order and Notice ¶¶ 60-61, 187-189.

On the other hand, the Commission acknowledged that ILECs must have a fair opportunity to market DSL services in competition with other, largely unregulated companies that are now emerging to satisfy the burgeoning consumer demand for higher-speed data services.[10/] It tentatively concluded that ILECs may provide such services substantially free from regulation -- including the requirements of section 251(c) -- if they do so through separate affiliates.[11/] The Commission has solicited public comment on the degree of separation that should be required. At the same time, it has requested comment on possible changes to its existing collocation and loop access policies that could increase competitors' chances to deploy their own advanced services.[12/]

NTIA strongly supports the thrust of the Commission's proposals. Properly implemented, they should foster further competition in telecommunications markets and, thus, promote deployment of advanced services. Specific comments on the separation, collocation, and loop access issues raised in the Commission's Notice of Proposed Rulemaking are set forth below.

I. Structural Separation

A. General Policy Considerations

Not surprisingly, the Commission's separate affiliate proposal has elicited criticism from many segments of the telecommunications industry. Some ILECs complain that structural separation is onerous and inefficient, and will handicap firms that are "uniquely well positioned among common carriers to bring advanced services to the mass market."[13/] But if indeed ILECs are uniquely situated to deploy advanced services, it is only because for decades government regulations established, protected, and perpetuated ILECs as monopoly providers of local voice telecommunications services. Pursuant to their monopoly franchises, ILECs have constructed extensive distribution networks serving virtually the entire market, enabling them to realize scale economies and other advantages of incumbency that no other provider can yet match. Furthermore, the ILECs' ubiquitous local networks give them a platform from

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10/ Id. ¶ 13.

11/ Id. ¶ 83.

12/ Id. ¶¶ 123-150, 154-177.

13/ Comments of US West Communications, Inc. in CC Docket No. 98-147, at 16 (filed Sept. 25, 1998). For convenience, unless otherwise indicated, all subsequent citations to "Comments" will refer to pleadings filed on September 25, 1998 in CC Docket No. 98-147.

which to launch other services (such as DSL) on an incremental basis, allowing them, and them alone, to exploit economies of scope in the provision of multiple services.[14/]

Potential economies of scale and scope should not be ignored, of course. To the extent that such economies exist and can be exploited by service providers, consumers will ultimately reap the benefits in the form of lower prices.[15/] Congress recognized, however, that promoting competition in telecommunications markets was the surest way to safeguard the interests of consumers. And competition would be harmed if ILECs alone were able to realize scale and scope economies in the provision of advanced services. The interconnection, unbundling, and resale requirements of section 251(c) were intended, at least in part, to allow alternative providers to share the economies that historically were the exclusive province of ILECs.[16/] The ultimate goal was to let marketplace forces determine which firms are the most efficient providers of services that consumers demand. Permitting ILECs to offer advanced services both on an integrated basis and free from the requirements of the Act would risk subverting the Act's structure and pro-competitive goals.

On the other hand, competitors' calls for more stringent separation requirements may jeopardize the benefits that structural separation can produce. NTIA recognizes that structural regulation imposes costs on the firms subject to it. We also understand that separation cannot eliminate ILECs' incentives to leverage their local exchange bottlenecks for the benefit of

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14/ See, e.g., id. at 16 ("existence of extensive circuit-switched facilities will permit economies of scope in the roll-out of packet-switched technologies"). SBC contends that more than half the costs of structural separation (amounting to some $200 million) is attributable to the affiliate's "[p]urchasing separate loops for data use only without the proper authorization (certification) by state regulatory bodies that would allow the affiliate to provide voice service as well as data service." Ex Parte Presentation of SBC Communications Inc. in CC Docket No. 98-147, at 1 (filed Nov. 20, 1998). In other words, the principal cost of separation, in SBC's view, stems from the fact that the affiliate cannot immediately offer voice and data services on an integrated basis. In that regard, however, SBC's affiliate would be no worse off than a prospective competitor. Indeed, a competitor could argue that SBC's putative "cost" of separation quantifies the unfair market advantage that an ILEC gains from its monopoly franchise, which allows it -- and only it -- to offer quickly a bundled voice and data service.

15/ There are, for example, likely economies of scope in the joint provision of voice and data services over the same subscriber loop. Allowing firms to capture those economies could speed the deployment of advanced data services to residential customers.

16/ See, e.g., Comments of Qwest Communications Corp. at 9-10.

their affiliates' advanced service offerings.[17/] Structural separation is also no substitute for vigorous remedial action in the event of anticompetitive conduct.[18/] Nevertheless, by introducing daylight between an ILEC's local exchange business and its advanced services operations, a separation requirement can make it easier for regulators to enforce fundamental principles designed to promote competition in the advanced services market -- above all, a requirement that alternative providers have an opportunity to market broadband services on terms equivalent to those enjoyed by ILECs. If the Commission were to expand its separation requirements to address in advance every conceivable form of anticompetitive conduct, it would substantially increase the costs of separation for ILECs. As a result, ILECs may choose to provide advanced services on an integrated basis, even at the cost of foregoing the regulatory relief that would accompany structural separation. As Commissioner Powell has pointed out, integrated ILEC provision of such services would complicate the Commission's task of promoting advanced services competition.[19/]

B. The Commission's Separation Proposal

The Commission views structural separation as a way of enabling ILECs "to offer advanced services on the same footing as any of their competitors,"[20/] consistent with the language and intent of the 1996 Act. To that end, it has tentatively concluded that if an ILEC creates an advanced services affiliate that is "truly separate" from its local exchange operations, that affiliate will not be deemed an ILEC under section 251(h) of the Communications Act.[21/] Consequently, the affiliate will not be subject to the special requirements (including interconnection, unbundling, and resale) that section 251(c) imposes only on ILECs.[22/] The Commission has also tentatively decided to treat an ILEC affiliate as nondominant, thereby exempting its interstate advanced services from tariffing obligations and from rate of return or price cap regulation.[23/]

17/ The desire to pursue and to capture such market advantages is not unique to ILECs, of course. The only difference between ILECs and their rivals is that the ILECs' dominant position in the local exchange market increases their prospects of success.

18/ Separate Statement of Commissioner Powell at 1, Order and Notice.

19/ Id. at 2.

20/ Order and Notice ¶ 86.

21/ Id.

22/ Id. ¶ 92.

23/ Id. ¶ 86.

Although NTIA supports the Commission's policy objective, we recommend another method for granting regulatory relief that could better serve the overarching goal of promoting telecommunications competition. The Commission should deem section 251(c) to be "fully implemented," with respect to advanced services such as DSL, if ILECs give other carriers timely and nondiscriminatory access to all of the network elements that they need to deploy competitive services.[24/] The Commission would then have the power under section 10 of the Communications Act to forbear from regulating particular ILEC advanced services, if it determines that forbearance would not produce unreasonable or discriminatory rates, harm consumers, or disserve the public interest.[25/] NTIA believes that the Commission could reasonably reach that conclusion if the ILEC offered such services through a separate affiliate.

NTIA's proposed approach to granting regulatory relief for ILECs' advanced services is preferable to the Commission's because of the uncertainties about the consequences of the Commission's proposal.[26/] No one can predict, for example, what effect deregulation of

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24/ See NTIA July Letter, supra note 5, at 8-9 and n.23. The record in this proceeding indicates that two things are particularly important -- loop facilities capable of supporting DSL services and collocation space on ILEC premises.

25/ See 47 U.S.C. § 160(a). Section 10(d) states that the Commission may not forbear from applying the obligations imposed by sections 251(c) and 271 "until [the Commission] determines that those requirements have been fully implemented." Id. § 160(d).

26/ Several parties assert that the Commission cannot judge "full implementation" of section 251(c) on a service-by-service basis. For the most part, however, they simply restate the statutory requirement that section 251(c) must be "fully implemented" before it can be suspended under section 10. See, e.g., Comments of the Association for Local Telecommunications Services at 67; Comments of AT&T Corp. at 95; Comments of Qwest Communications Corp. at 69. But those arguments beg the critical question -- what do those two words mean? Because the phrase itself is not self-explanatory, and because Congress gave no hint as to its intentions, the Commission has latitude to construe the language in ways that promote the goals of the 1996 Act. See NTIA July Letter, supra note 5, at 8 n. 23.

It could be argued that if section 251(c) can be deemed fully implemented on a service-by-service basis, the same must be true for section 271, the other provision specifically mentioned in section 10(d). But there is nothing in the language or purpose of section 271 to support such a conclusion. Although the competitive checklist in section 271(c)(2)(B) refers to parts of section 251, the checklist requirements extend beyond the latter provision. Accordingly, full implementation of section 251, however determined, cannot alone satisfy the checklist obligation. Further, the checklist references to section 251(c) are open-ended, and require Bell Operating Companies (BOCs) to provide interconnection, unbundled elements, and resale "in accordance with the requirements of" section 251(c)(2),

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ILEC advanced services will have on ILECs' investment in network facilities and equipment. One can surmise, however, that the lure of lessened regulation may induce them to make such investments through their separate affiliates. If the Commission were to deregulate an ILEC's advanced services affiliate definitionally -- by declaring it not to be an ILEC and, thus, not subject to 251(c) -- the Commission might inadvertently cordon off the affiliate's network facilities from competitive access, relegating competitors to the incumbent's embedded, less robust, infrastructure.[27] A worst case result could be a transfer of the local exchange bottleneck from the ILEC to its unregulated advanced services affiliate.

On the other hand, if the Commission were to deregulate the affiliate via forbearance -- by declining to enforce requirements that would otherwise apply -- the Commission would have greater flexibility to study the market effects of its decision and to adjust its regulations if circumstances warrant. As a result, it could better ensure that reduced regulation of an ILEC's advanced services would not imperil robust competition.

C. Degree of Separation

In the Order and Notice, the Commission identified a series of separation requirements that, if complied with, would enable an ILEC affiliate to offer advanced services on a

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26/ (...continued from preceding page)
(3), and (4), respectively. See 47 U.S.C. § 271(c)(2)(B)(i), (ii), (xiv). The generality of that language strongly suggests that satisfaction of section 251(c) for any particular service would not suffice to discharge a BOC's broader checklist obligation.

That conclusion conforms with the purpose of section 271. Congress viewed and used interLATA entry as a "carrot" to induce the BOCs to participate in the effort to foster local competition. See Office of Policy Analysis and Development, National Telecommunications and Information Administration, Section 271 of the Communications Act and the Promotion of Local Exchange Competition 55-56 and n.267 (NTIA Staff Working Paper Jan. 1998). Thus, section 271 bars BOCs from offering interLATA services until their local exchange monopolies have been opened to competition, as evidenced by, among other things, compliance with the competitive checklist. See id. at 45-46. Given Congress' desire to promote pervasive competition in local markets -- and the central role that section 271 was meant to play in that effort -- it is unlikely that Congress would have considered section 271 to be fully implemented if BOC compliance with section 251 were to enable competitors to provide only a subset of local exchange services.

27/ See, e.g., Comments of ICG Telecom Group Inc. at 3-5; Comments of Qwest Communications Corp. at 26-27.

substantially less regulated basis.[28/] NTIA believes that the most important of these are the following:

- The affiliate must interconnect with the ILEC either pursuant to tariff or to an interconnection agreement negotiated in accordance with section 252 of the Communications Act;[29/] whatever network elements, facilities, interfaces and systems the ILEC provides to the affiliate must be made available to competitors on the same terms;

- The ILEC may not discriminate in favor of its affiliate in the provision of any goods, services, facilities, information, or in the establishment of standards;

- All transactions between an ILEC and its advanced services affiliate must be on an arm's length basis, in writing, and available for public inspection;

- The affiliate may not obtain equity from the ILEC and may not obtain credit under any arrangement that would give a creditor, upon default, recourse to the ILEC's assets;[30/]

- The ILEC and its affiliate may not jointly own transmission facilities and switching equipment, or the land and buildings on which such things are located.

NTIA also submits that several other safeguards would be in the public interest.

1. Pre-Certification of the Advanced Services Affiliate

We agree with the many commenters who recommend that each ILEC receive Commission certification before commencing operations. Through a certification process, the Commission can satisfy itself that each ILEC has afforded competitors reasonable, timely, and non-discriminatory access to the network elements that they need to deploy advanced services,

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28/ Order and Notice ¶ 96.

29/ The affiliate would have to use the same ILEC preordering, ordering, provisioning, maintenance and repair, and billing systems as competitors, and on the same terms and conditions.

30/ The affiliate would be free to obtain debt or equity from its holding company parent, or from another affiliate that is not also an ILEC.

before the affiliate secures authority to provide such services on a deregulated basis.[31] A certification requirement should not burden ILEC affiliates so long as the Commission establishes expedited comments cycles and commits to rendering a decision within a reasonable time (e.g., 60-90 days).

On the other hand, the Commission should not require an ILEC to demonstrate compliance with the relevant separation requirements as a condition of receiving regulatory relief. An affiliate's adherence to those requirements can best be determined on a going forward basis -- by examining the affiliate's performance after it has commenced operations. Accordingly, the Commission should allow an ILEC affiliate to "self certify" its compliance with the applicable separation requirements. Any subsequent violations of those obligations can be identified through competitors' complaints and remedied when appropriate by swift and substantial penalties. Thus, the Commission should establish expedited procedures for review and resolution of complaints filed by aggrieved parties and should adhere strictly to the timetables set.[32] The Commission should also consider specifying in advance the range of penalties that might apply to ILEC/affiliate violations of their separation requirements in order to deter unlawful conduct.

2. Independent Operation

The Commission correctly concludes that, to qualify for relaxed regulatory treatment, the advanced services affiliate must operate independently from the ILEC. At a minimum, the affiliate and the ILEC should have separate books, records, and accounts, as well as separate officers, directors, and employees. The Commission should also take steps to create financial incentives for the affiliate to act independently from the ILEC. Thus, the Commission should mandate that all compensation of the affiliates employees, officers, and directors be paid entirely by the affiliate and be based solely on the affiliate's financial performance. It could also consider requiring the affiliate to possess significant, non-majority, public ownership.[33] By so doing, the Commission would provide greater assurance that transactions between an ILEC and its advanced services affiliate reflect the interests of the

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31/ In its application for certification of a new service, the affiliate would indicate what ILEC network elements competitors must have in order to provide an alternative service and demonstrate that the ILEC was making those elements available to competitors in accordance with the requirements of the Act and the Commission's regulations.

32/ The Act requires the Commission to act on complaints alleging BOC violations of the section 271 competitive checklist within 90 days after such complaints are filed. See 47 U.S.C. § 271(d)(6)(B). The Commission should commit to resolving complaints relating to ILECs' separation obligation within the same time frame.

33/ See, e.g., Comments of AT&T Corp. at 20; Comments of the Commercial Internet Exchange Ass'n at 18; Comments of ICG Telecom Group Inc. at 8-10.

affiliate alone, rather than a desire to maximize combined profits or a paper transfer from one corporate pocket to another.

3. Transfers from the ILEC to the Affiliate

Many ILECs are now or are in the process of marketing DSL services on an integrated basis. As noted above, it may be easier for the Commission to ensure that competitors can offer their own advanced services if ILECs provide advanced services through a separate affiliate. ILECs may not find separation attractive, however, even considering the associated regulatory relief, if they cannot transfer their existing advanced services operations to their newly-created affiliates.

NTIA therefore recommends that ILECs be allowed a reasonable period of time within which to transfer customer accounts and certain equipment to their advanced services affiliate. As for equipment, we think that ILECs should be permitted to convey equipment purchased or installed on or before the effective date of the Commission's order in this proceeding.[34/] Further, NTIA urges the Commission, at this time, to allow ILECs to transfer digital subscriber line access multiplexers (DSLAMs) and customer premises DSL modems. Such devices are readily obtainable in the marketplace and do not appear to be characterized by such economies of scale as to prevent competitors from deploying such equipment, even over a limited customer base.[35/]

There are currently two places in an ILEC's central office for collocation of DSLAMs: compact racks generally used for the ILEC's own equipment, and collocation cages generally used by competitors for their equipment. Racks are less costly to install and maintain than

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34/ The Commission need not establish a time period within which such transfers must be completed, as long as the ILEC (1) provides public notice of any equipment transfer between it and the affiliate, (2) certifies that the equipment involved is of a type that may be transferred, (3) confirms that the transfer complies with all pertinent regulations, and (4) demonstrates that the affiliate pays fair market value for the equipment conveyed. See Order and Notice ¶ 96

35/ See NTIA July Letter, supra note 5, at 12-13 and n.34. On the other hand, ILECs must not be allowed to convey to their affiliates the advantageous collocation arrangements that the ILECs' advanced services equipment now enjoys, unless competitors have fair and timely access to those same arrangements. Thus, when an ILEC seeks to transfer DSLAMs to its affiliate, the affiliate should be required to negotiate a formal collocation agreement covering the equipment conveyed. In general, an ILEC should not be allowed to provide its affiliate with any collocation arrangement that has not been proved to be a viable option for competitors as well. If an ILEC cannot furnish comparable collocation opportunities to competitors, it may not transfer the associated equipment to the advanced services affiliate.

cages, and therefore reduce the costs and time to market for DSL services. Such savings can benefit consumers but, if available only to the ILEC's affiliate, can give the affiliate an advantage over new entrants that in the long run may reduce competition in the provision of low-cost, high-quality DSL services. As discussed below, the Commission should therefore require ILECs to develop collocation practices that would allow competitors to use compact racks on terms comparable to those available to ILEC affiliates. The benefits of efficient collocation arrangements should not be lost to the marketplace, but neither should the well-established, long-run benefits of competition.

With respect to virtual collocation,[36/] NTIA is concerned that currently available collocation arrangements may not suffice to put new entrants and ILEC affiliates on an equal competitive footing. As we understand the typical virtual collocation agreement, a competitor purchases equipment and then sells it to the ILEC for a nominal amount. The ILEC then installs the equipment in a rack and operates and maintains it on behalf of the competitor. While virtual collocation can dramatically reduce a competitor's costs of operating within an ILEC's central office, it also places the competitor's business in the hands of an actual or potential market rival. For that reason, virtual collocation is not an attractive alternative for many competitors.[37/]

For obvious reasons, an ILEC affiliate would likely not have the same qualms about virtual collocation. Consequently, affording ILEC affiliates a virtual collocation option may be tantamount to giving them a significant competitive advantage over other providers. One way to correct this disparity would be for ILECs to allow competitors to maintain their virtually collocated equipment, consistent with the ILECs' legitimate security concerns.[38/] The Commission should therefore consider allowing an advanced services affiliate to negotiate virtual collocation arrangements with its ILEC if the ILEC allows competitors to maintain their own virtually collocated equipment.[39/]

36/ Order and Notice ¶ 101.

37/ See Covad Communications Co. v. Pacific Bell, Interim Opinion with Respect to Covad's Claim for Breach of the Interconnection Agreement and Injunction, Case No. 74Y181031398, at 8 (American Arbitration Ass'n Nov. 24, 1998) (appended as Attachment 1 to Letter from Thomas Koutsky, Covad Communications Co., to Chairman William Kennard (Dec. 7, 1998)).

38/ See Comments of Ameritech at 38.

39/ Recently, a group of ILECs and computer companies negotiated a set of ten principles intended to accelerate deployment of advanced network services. See Letter from Robert Blau, BellSouth, et al., to Chairman William Kennard (Dec. 7, 1998). See also "Joint Statement of Principles in a Separate Subsidiary Environment by Ameritech and Northpoint

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4. Joint Marketing

NTIA agrees with the Staff of the Federal Trade Commission that ILECs should be barred from jointly marketing their affiliates' advanced services with the ILECs' local exchange services.[40/] The ILECs' dominance of the local marketplace makes them the initial point of contact for most telecommunications customers. We believe that there are too many ways for ILECs to exploit that market position to benefit unfairly their affiliated advanced service operations.[41/] We understand that a joint marketing restriction could deny ILECs the opportunity to realize economies of scope from the combined provision of conventional and advanced services.[42/] As noted above, however, the companies' ability to capture such economies is attributable in large part to their local franchise monopoly. Their claim to exploit such economies is therefore a weak one.[43/]

On the other hand, the affiliate should be able to market the ILEC's services in combination with the affiliate's advanced services offerings. Thus, for example, the Commission should not prevent the affiliate from reselling the ILEC's services or from acquiring unbundled network elements from the ILEC.[44/] As long as the affiliate obtains

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39/ (...continued from preceding page)
[Communications]" (attached to Letter from James Smith, Ameritech, to FCC Secretary Magalie Salas (Nov. 3, 1998)). NTIA applauds those firms for their efforts and encourages other companies to work together to find mutually acceptable ways to foster competition and to stimulate infrastructure investment. We note, however, that one of the companies' ten principles commits the signing ILECs to affording competitors access to their own virtually collocated equipment, but only when "the ILEC determines that it cannot clear the reported trouble in less than two hours." (Principle 2(a)). NTIA views that as an unacceptable limitation on a competitor's ability to service its own equipment.

40/ See Comments of the Staff of the Bureau of Economics of the Federal Trade Commission at 11-13 (FTC Staff Comments).

41/ See, e.g., Comments of the Coalition of Utah Independent Internet Service Providers at 9-11.

42/ See, e.g., Comments of Bell Atlantic at 30.

43/ While the Commission should bar an ILEC from jointly marketing its affiliate's services, the Commission should allow ILEC employees to refer inbound callers requesting advanced services to the affiliate. If an ILEC performs such "inbound telemarketing" on behalf of its affiliate, it should provide the same service to competitors, upon request, on the same terms and conditions. See FTC Staff Comments, supra note 40, at 12.

44/ See Order and Notice ¶ 101.

services and facilities from the ILEC pursuant to tariff or to a valid interconnection agreement, the affiliate will stand in the same position as any competitive advanced services provider. The affiliate should therefore have the same flexibility as competitors have to provide "one-stop shopping" to its customers.[45/]

5. Sharing of Customer Information

The Commission should not allow ILECs to transfer freely to their advanced services affiliates customer information derived from the ILECs' provision of conventional local exchange service. Once again, the ILECs' accumulation of such competitively-valuable customer information is due primarily to their monopoly local exchange franchise. They should not be allowed to use that information solely for the benefit of their advanced services affiliate. Accordingly, the Commission should preclude ILECs from transferring customer information to their advanced services affiliate without first obtaining the affected customer's consent. Further, any information that an ILEC makes available to its affiliate should also be provided to competitors on the same terms and conditions, unless the affected customer specifically directs otherwise.[46/]

6. Sharing of Corporate Logos or Brand Names

NTIA disagrees with those who argue that the advanced services affiliate should not be allowed to share the ILEC's logo and brand name.[47/] The Commission has not imposed such

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45/ A BOC's advanced services affiliate, of course, may not provide any interLATA services until the BOC complies with the requirements of section 271.

46/ This limitation would not be inconsistent with section 222 of the Communications Act or the Commission's customer proprietary network information (CPNI) rules. The Commission has interpreted section 222 to permit carriers to use CPNI without the customer's consent "only to the extent that a carrier is marketing alternative versions, which may include additional or related offerings, of the customer's existing subscribed service." Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8088, ¶ 35 (1998). As GTE points out, the advanced services market is both different from and unrelated to the local exchange market. Comments of GTE Corp. at 6. Thus, ILECs must obtain consent before transferring customer information to their advanced services affiliates.

47/ See, e.g., Comments of CTSI, Inc. at 3-4; Comments of e.spire Communications, Inc. at 9-10; Comments of Qwest Communications Corp. at 45; FTC Staff Comments, supra note 40, 4-9. NTIA believes it reasonable to treat the sharing of corporate symbols differently than joint marketing. Joint marketing creates unacceptable risks that ILECs will be able to

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a restriction in the past, and should not do so here.[48/] While the ILECs' dominant local market position is due primarily to their historic monopoly franchises, the good will associated with their names and logos is most likely a product of the quality of service (good, bad, or indifferent) that they have provided over the years. To the extent that an ILEC has earned consumer confidence with superior service, it should be allowed to transfer that good will to its other lines of business.[49/] Although consumers familiarity with an ILEC's name and corporate symbol may attract them to the affiliate's advanced services initially, over time they will likely make their purchasing decisions based on the price and quality of the affiliate's services, as compared to those of its rivals. Any short-term abuses can be rectified through vigorous enforcement of applicable laws and Commission regulations.

7. Regulation of the Affiliate's Services

NTIA supports the Commission's tentative decision to treat the advanced services affiliate as nondominant with respect to its interstate service offerings, and thus exempt from rate of return or price cap regulation.[50/] If the separation conditions are complied with, and as continued implementation of the 1996 Act expands opportunities for competitive entry, market forces should deter an ILEC affiliate from charging excessive rates for its advanced service offerings. There is, correspondingly, less need for extensive government regulation of those prices.

47/ (...continued from preceding page)
leverage their local exchange market power into the advanced services market by steering their local telephone customers towards their affiliates' advanced services. On the other hand, the ILEC's corporate name will likely attract customers to the affiliate only if the ILEC has a record of quality services. Thus, the benefit that the affiliate receives stems not from the parent's dominant market position, but from the parent's performance in the marketplace.

48/ See, e.g., AT&T Co., 90 FCC 2d 404, 419 (1982) (under Computer II regime, AT&T's CPE and enhanced services subsidiary allowed to use company logo); GTE-Telenet Merger, 72 FCC 2d 111, 138 (1979) (Telenet, an enhanced service provider acquired by GTE, allowed to use GTE's corporate logo). If an ILEC allows its affiliate to use the ILEC's logo or brand name, the affiliate must compensate the ILEC, as would be the case with the transfer of any other asset from the ILEC to its affiliate.

49/ To the extent that an ILEC uses institutional advertising to enhance the value of its corporate symbols, the affiliate, as a partial beneficiary, should pay its share of those expenditures. On the other hand, the affiliate alone should bear the full costs of its product-specific advertising.

50/ Order and Notice ¶ 100.

NTIA does not believe, however, that the Commission should exempt the affiliate from Federal tariff filing requirements at this time. The tariff review process provides a useful mechanism for ensuring that the affiliate does not receive underlying facilities, services, and functions from the ILEC on terms more favorable than those available to competitors.[51/] Tariff review will also help the Commission determine whether an ILEC affiliate has imposed unreasonable or discriminatory restrictions on the resale or use of its telecommunications services. The Commission could assess, for example, whether the affiliate's service is a viable alternative for independent information service providers (ISPs) seeking to provide high-speed Internet access to their customers. By so doing, the Commission could ensure that consumers could choose from a wider range of ISPs.[52/]

The Commission should therefore require each ILEC affiliate to tariff its interstate telecommunications services, but should accord streamlined treatment to those tariffs under its Competitive Carrier framework. Thus, an affiliate's initial tariff, and any changes thereto, could be filed on one day's notice; it would be presumptively lawful; and it would need only minimal cost support. The Commission could detariff the affiliate's services in the future once competition takes hold in the advanced services market.

8. Sunsetting of Separation Requirements

The Commission also asks whether any separation requirements adopted in this proceeding should terminate automatically after a certain period of time.[53/] NTIA believes that the Commission should adopt the approach set forth in section 272 of the Act. Thus, structural separation would cease to apply on a future date certain, unless the Commission elects to extend it for an additional period.[54/] We think that a 4-year sunset period would be reasonable.[55/] That would be long enough to mitigate the incentives that ILECs might have to hinder additional local competition, in hopes of gaining a competitive advantage in the advanced services market after separation terminates. It is short enough to give ILECs a promise of expeditious regulatory relief in the event that they fully comply with their obligations under the Act.

51/ See NTIA July Letter, supra note 5, at 12.

52/ See id. at 18-19.

53/ Order and Notice ¶ 99.

54/ See 47 U.S.C. § 272(f).

55/ See id. § 272(f)(2).

II. Additional Measures to Promote Local Exchange Competition

Because NTIA favors regulatory changes designed to eliminate barriers to entry for competitors seeking to provide broadband and other advanced telecommunications services to all Americans, we support the Commission's efforts to strengthen collocation requirements and to promote the availability of loops in a manner that will facilitate both deployment of advanced services and competitive provision of such services. We discuss below several proposals designed to meet those objectives.

A. National Standards for Collocation and Loop Availability

The Commission has sought comment on the extent to which it should establish national rules for collocation and local loop availability.[56/] NTIA continues to believe that the best regulatory framework is one that takes advantage of the combined talents and experience of Federal and State regulators to foster local competition and to spur efficient broadband deployment. We therefore reiterate our earlier recommendation that the Commission adopt a dynamic "best practices" model with respect to both collocation and loop availability.[57/]

Under NTIA's approach, if (1) a State commission has ordered an ILEC to provide a particular collocation or loop arrangement or (2) an ILEC has voluntarily offered to provide such an arrangement, there would be a rebuttable presumption that it would be technically feasible for ILECs to make the same arrangements available in any other part of the country. An ILEC opposing any such arrangement would have the burden of persuading the relevant State commission by clear and convincing evidence that the collocation or loop arrangement requested is not technically feasible.

As the Commission is aware, State commission arbitration of interconnection negotiations between ILECs and competitive local exchange carriers (CLECs) has produced a wide range of collocation and loop availability policies. Voluntary agreements between industry groups are now supplementing the efforts of State commissions.[58/] By creating a presumption that State-mandated and voluntarily negotiated practices be made available nationwide, the Commission would create a fluid process that would allow developments throughout the industry to drive forward collocation and loop access policies and would promote the diffusion of the most progressive practices throughout the country.

56/ Order and Notice ¶¶ 123, 154.

57/ See NTIA July Letter, supra note 5, at 15; Reply Comments of the National Telecommunications and Information Administration in CC Docket No. 96-98, at 9-13 (filed May 30, 1996).

58/ See the agreements cited in note 39 supra.

The Commission could supplement that process by revising its minimum requirements periodically to reflect superior practices that have become commonplace nationwide or that would clearly serve the goal of expanded competition and faster service deployment. We discuss several specific proposals below.

B. A National Model for Collocation Space and Loop Information

Successful development of a competitive market for DSL and other advanced services will depend in part on the general availability of certain ILEC network information. Potential providers of DSL services, whether ILECs, their affiliates, or CLECs, need information about loop characteristics in order to determine the suitability of particular loops for DSL services and the equipment used to provide such services. With such information, ILECs and their competitors can ascertain what specific services are possible, which potential customers can be served, which equipment should be employed, and at what cost. In addition, CLECs and ILEC affiliates need to know where collocation space is available, and in what quantity, in order to identify specific neighborhoods in candidate markets where competitive advanced services can be provided. Thus, timely provision of certain ILEC network information can speed the rollout of advanced services by minimizing the time that ILEC affiliates and their competitors need to identify and to order the loops and collocation space required to offer such services.

The challenges ILECs face in making the necessary information available are not trivial. Because central office space and loop facilities have traditionally been factor inputs controlled and used solely by ILECs, existing information about such facilities may not be complete or in a form suitable for use by outside customers without supplementation or modification.[59/] Even if the required information databases were complete and accurate, ILECs may well need to create or modify existing electronic or other systems to make the necessary information available to their customers.

In the interest of promoting more rapid rollout of advanced services, the Commission should require ILECs to generate and make needed collocation and loop information conveniently available to service their affiliates and to potential competitors.[60/] Specifically, the Commission should require the ILECs to establish and maintain lists from which their affiliates and competitors can learn exactly how much collocation space is available in each

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59/ ILECs have suggested that they may have incomplete information on loop characteristics and that the loop information in their possession may not always be completely accurate or up-to-date. See, e.g., Comments of Ameritech at 16.

60/ The Commission should not require ILECs alone to bear the costs of gathering that information and making it conveniently available.

central office.[61] In addition, ILECs should be required to develop databases with sufficiently detailed loop information to allow service providers to determine independently whether particular loops can support the DSL services and equipment planned for those loops.[62] The public availability of such information will help all competitors to identify and to exploit more rapidly attractive opportunities to deploy DSL and other advanced services.[63]

Clearly, relevant ILEC network information will need to be updated, modified, and supplemented over time. In the near term, ILECs should be required to share with competitors all current collocation space and loop information in their possession, and in the same manner that they provide such information to themselves or to an affiliate. As updated or new information becomes available, either generated by the ILECs themselves or in response to requests from CLECs or ILEC affiliates, ILECs should be required to share that information immediately with all competitors. Such an arrangement should establish and maintain information parity among competitors even as the necessary network information changes over time.

61/ This information should include the current amount of space available, number of current collocators, the amount of space for which an order is pending, the amount of space created by eliminating any "retired-in-place" ILEC equipment (and the time it will take to do so), and any other information that will affect the availability of collocation space in a particular office. In central offices in which ILECs claim that no space is available, they should be required to make conveniently available to CLECs detailed central office floor plans or diagrams that are currently required to be provided to State commissions. See Order and Notice ¶ 145.

62/ At a minimum, loop information should include descriptions of loop length, condition, location, gauge of wire involved, and the presence of all equipment that will either hinder or facilitate the provision of DSL services.

63/ Electronically accessible databases would give potential competitors and ILEC affiliates a convenient way to obtain the required information. We agree with the Commission's tentative conclusion that all competitors should have access to loop information in the same fashion, electronic or otherwise, as that available to ILECs. See Order and Notice ¶ 158. Bell Atlantic notes that its retail sales channels and competitors will have nondiscriminatory access through a web-GUI interface to a loop database that results from a pre-testing process for pre-ordering and ordering purposes. See Comments of Bell Atlantic at 45. See also Comments of AT&T Corp. at 58. The same parity standard should also govern access to central office space information.

C. Collocation of Switching Equipment

NTIA applauds the Commission's tentative conclusion to allow competitors to collocate equipment that includes switching functionality in ILEC central offices.[64/] As the Commission recognizes, any attempt to distinguish, for collocation purposes, between switching equipment and interconnection equipment will be unsustainable given the trend in manufacturing to integrate multiple functions into telecommunications equipment.[65/] Barring collocation of equipment with switching functionality could also arrest development of more efficient, multifunction equipment by making competitive providers wary of purchasing such equipment for fear that they would not install it in ILEC central offices.[66/]

The 1996 Act does not limit the type of equipment that competitors may collocate in ILEC offices. Congress specifically entitled competitors to secure unbundled elements from ILECs in order to provide any "telecommunications services."[67/] It would be illogical to conclude that Congress meant to limit competitors' discretion to select the equipment that they would use to convert those elements into marketable services.[68/] In fact, section 251(c)(6) -- which states the ILECs' collocation obligation -- identifies only two limitations on competitors' collocation rights.[69/] The first concerns the entities that may request collocation -- telecommunications service providers only.[70/] The second relates to the purposes for

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64/ Order and Notice ¶ 129.

65/ Id. ¶ 128 (citing NTIA July Letter, supra note 5, at 15).

66/ NTIA July Letter, supra note 5, at 15-16.

67/ See 47 U.S.C. § 251(c)(3).

68/ The Act permits competitors to interconnect with an ILEC's network "for the transmission and routing of telephone exchange service and exchange access." Id. § 251(c)(2)(A). The specific linkage of interconnection and routing of traffic reflects Congress' understanding that competitors may wish to collocate switching equipment in ILEC central offices in order to effectuate their interconnection rights.

69/ The provision was included in the 1996 Act to reverse a court ruling that the Commission lacks authority to order physical collocation in the absence of specific congressional authorization. See H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 73 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 39 (House Report). The court decision was Bell Atlantic Tel. Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

70/ See House Report, supra note 69, at 73, 1996 U.S.C.C.A.N. at 39.

The fact that Congress saw fit to restrict the class of firms that could seek collocation and the purposes for which they could do so does not imply an intent to limit the types of equipment that could be used.

ILECs now argue, citing Bell Atlantic Tel Cos. v. FCC, that section 251(c)(6) must be strictly construed to avoid any excessive, and unconstitutional, taking of ILEC property.[72] They contend, in particular, that the phrase "necessary for interconnection or access to unbundled network elements" in section 251(c)(6) must be read narrowly to permit collocation only of equipment essential for or used exclusively to interconnect with ILEC networks.[73]

Those claims misconstrue the Bell Atlantic decision. That case involved physical collocation rules promulgated by the Commission pursuant to its authority under section 201 of the Communications Act to order carriers "to establish connections with other carriers."[74] The court concluded that because constitutional rights were at stake, it had to employ a "strict test of statutory authority" for the rules in question, rather than the more deferential standard commonly applied.[75] The dispositive question, in the court's view, was whether "any fair reading" of section 201(a) would "supply a clear warrant to grant third parties a license to exclusive physical occupation of a section of the LECs' central offices."[76] It concluded that the broad language of section 201(a) did not provide the requisite authority.

In contrast to the general statutory provision before the Bell Atlantic court, section 251(c)(6) creates a specific duty on the part of ILECs to permit collocation of competitors' equipment in ILEC offices. As noted above, that language was inserted precisely to give the Commission the authority to order physical collocation that the Bell Atlantic court found wanting in section 201(a). The only question, then, is whether "any fair reading" of section 251(c)(6) would support a Commission decision to construe the word "necessary" to permit competitors to install a broader range of equipment in their collocated spaces. The answer is plainly yes. On the other hand, the cramped construction of "necessary" proposed by the ILECs would undermine the procompetitive purposes of the 1996 Act in the same way that a narrow reading of the same word in section 251(d)(2) "would unduly restrict the unbundling

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72/ See Comments of US West at 37; Comments of Bell Atlantic at 38.

73/ Comments of Bell Atlantic at 38.

74/ Bell Atlantic Tel. Cos. v. FCC, 24 F.3d at 1445 (quoting 47 U.S.C. § 201(a)).

75/ Id. at 1444-1446, 1447.

76/ Id. at 1446.

duty of incumbent LECs and hinder the development of competition in the local telecommunications industry."[77/]

The Commission should therefore revise its rules so that competitors may collocate equipment with switching functionality in ILEC central offices.[78/] If it is concerned that such expanded collocation opportunities may lead to space exhaustion within those offices, the Commission and State regulators should consider adopting maximum size limitations for collocated equipment generally, rather than attempting to fashion inefficient, unsustainable, and competition-inhibiting restrictions based on the functions that such equipment can perform. Where appropriate, a maximum size requirement would afford competitors flexibility in choosing the products most suitable for their interconnection needs, while also reducing the possibility that one or a few collocators could monopolize available central office space.

D. Specific Collocation Requirements

NTIA supports the Commission's tentative conclusion that ILECs should be required to provide multiple collocation arrangements, allowing collocators to use the minimum space necessary to meet their needs.[79/] Specifically, the required ILEC collocation arrangements should include both shared or individual collocation cages with no minimum size requirements, as well as shared or individual "cageless" arrangements, also with no minimum size requirements. Creating multiple collocation alternatives will promote a more optimal allocation of central office space and will increase the likelihood that collocators can find suitable arrangements.

NTIA also supports measures that reduce collocation costs and minimize the delays involved in obtaining collocation space. We heartily applaud efforts by State commissions and ILECs to reduce costs to individual collocators by limiting a CLEC's share of space preparation costs to the space actually used, and by allowing installment payments.[80/] The

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77/ Iowa Utils. Bd. v. FCC, 120 F.3d 753, 811 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998).

78/ Needless to say, where ILECs install equipment in their central offices in order to deploy advanced services, whether directly or through an affiliate, they must allow competitors to collocate the same type of equipment in order to provide comparable services. See Order and Notice ¶ 129.

79/ Id. ¶ 137. Commenters suggest that all alternatives suggested by the Commission are technically feasible. See, e.g., Comments of Qwest Communications Corp. at 56.

80/ Order and Notice ¶ 143. See also Comments of Ameritech at 45. In addition, Bell

(continued...)

Commission should endorse such efforts as examples of laudable current national collocation practices.

NTIA favors the adoption of two additional measures to address the length of ordering and provisioning intervals. The Commission should require ILECs to make central office space information conveniently available, as described earlier, to assist CLECs and ILEC affiliates in their planning and pre-ordering decisions. In addition, the Commission should allow certified CLECs more discretion in ordering collocation space. They should have the option of accelerating the start of the provisioning process by ordering space prior to a finalized interconnection agreement, if particular CLECs judge such action to be in their best interest.[81/]

Finally, we support the Commission's proposals to resolve potential disagreements with respect to collocation space availability.[82/] Specifically, CLECs should be allowed to tour central offices in question in an effort to identify usable collocation space. Also, the ready availability of detailed floor plans and other collocation space information, that would be developed as part of our national information model (discussed above), should aid CLECs in identifying candidate collocation possibilities. Any further disagreement concerning the appropriateness of the identified space for collocation purposes should be resolved by State commissions.

E. Loop Availability Requirements

In its August Order, the Commission reiterated that ILECs must "condition existing loop facilities to enable requesting carriers to provide services not currently provided over those facilities."[83/] Thus, if a competitive carrier requests a loop free of loading coils, bridged taps, or other devices, the ILEC must accommodate the request, if technically feasible and if the requesting carrier pays all applicable costs.[84/] ILECs contend that if, under the Commission's ruling, they must provide loop conditioning for competitors when ILECs do not

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80/ (...continued from preceding page)
Atlantic notes that collocation proceedings before various State commissions are examining sharing, "cageless," virtual collocation and minimum size issues. Comments of Bell Atlantic at 41.

81/ Ameritech allows carriers to "begin collocation" prior to state certification or an interconnection agreement. Comments of Ameritech at 45.

82/ Order and Notice ¶ 146.

83/ Id.¶ 53 (quoting Local Competition Order, 11 FCC Rcd 15499, 15692, ¶ 382 (1996)).

84/ Id. ¶ 53 and n.98.

perform it for themselves, ILECs will be obliged to furnish competitors a "superior" level of service, in violation of the 1996 Act and the Eighth Circuit's decision in Iowa Utilities Board v. FCC.[85/]

NTIA urges the Commission to confirm that ILECs must, upon request, condition their existing loops so that competitors may provide services such as DSL, even if ILECs do not do so for themselves or their affiliates. The 1996 Act directs ILECs to give competitors access to unbundled network elements at any technically feasible point, so that competitors may provide any telecommunications service.[86/] That unbundling requirement is a fundamental component the pro-competitive framework designed by Congress "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans."[87/] If the Commission were to accept the ILECs' view of their conditioning obligations, innovation would inevitably be limited to the services that ILECs choose to provide. That result, of course, would be flatly inconsistent with the objectives of the 1996 Act.

The Iowa decision does not compel the Commission to abandon the conditioning requirement reaffirmed in the August Order. The Eighth Circuit did not directly address ILECs' obligations to competitors when the former do not provide services to themselves. Rather, the court held that when ILECs provide service to themselves, the level of service furnished "establishes a floor below which the quality of [service provided to competitors] may not go" and a ceiling above which the Commission may not mandate.[88/] The court declared, moreover, that ILECs need not "cater" to competitors "every desire," but need only give the latter unbundled access to the ILECs' "existing network -- not to a yet unbuilt superior one."[89/] Significantly, however, the court endorsed the Commission's statement that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to [ILEC]

85/ See, e.g., Comments of Bell Atlantic at 46 (citing 47 U.S.C. § 251(c)(3) and Iowa Utils. Bd. v. FCC, supra, 120 F.3d at 812-813). Bell Atlantic and SBC have petitioned the Commission to reconsider this portion of its August Order. For the reasons discussed below, the Commission should deny those petitions.

86/ 47 U.S.C. §251(c)(3).

87/ Conference Report, supra note 5, at 113, 1996 U.S.C.C.A.N. at 124. See also House Report, supra note 69, at 48, 1996 U.S.C.C.A.N. at 11 (procompetitive structure created by House bill will result in "lower prices to consumers and businesses, greater choice of services, more innovation, . . .").

88/ Iowa Utils. Bd. v. FCC, supra, 120 F.3d at 813.

89/ Id.

facilities to the extent necessary to accommodate interconnection or access to network elements."[90/]

The Commission has not imposed excessive conditioning obligations on ILECs. ILECs do not have to deploy new facilities so that competitors can offer advanced services. They do not have to accommodate competitors every demand; ILECs need only make limited modifications to their existing network facilities, if technically feasible and at the competitors' expense, to enable the latter to provide services that the 1996 Act entitles them to offer. The Iowa decision erects no bar to that procompetitive result.[91/]

NTIA supports the Commission's efforts to promote the availability of unbundled DSL-compatible loops, including those that pass through remote terminals, as well as loops compatible with developing other advanced services.[92/] As much as 30 percent of ILEC local loops in some markets may be provisioned over digital loop carrier (DLC) systems that employ remote terminals placed between customer premises and switching offices and a mix of copper and other media along the transmission path. As a result, specific loop unbundling provisions will be needed to enable competitors to provide DSL and other advanced services to the subscribers served by DLC loops. NTIA therefore endorses measures to create DSL- and or advanced service-compatible loop alternatives for customers currently provisioned over DLC systems, where feasible.

We also concur with the Commission's tentative conclusion that CLECs should be able to request any technically feasible method of obtaining DSL-compatible unbundled DLC-delivered loops.[93/] ILECs should be obligated to serve each such request, unless they can show that particular requests are technically infeasible. Consistent with our best practices approach, CLECs should be free to request all methods either ordered by a State commission or voluntarily offered by an ILEC in the provision of such loops.[94/]

90/ Id. at n.33.

91/ Bell Atlantic suggests that a conditioning requirement would consign it to some Stalinist gulag, "conscripted" into providing "forced labor" for the benefit of competitors, at the expense of its basic service ratepayers. Ameritech, on the other hand, voluntarily provides loop conditioning in accordance with the requirements set forth in the August Order and the Local Competition Order. Comments of Ameritech at 10-11. Thus, Bell Atlantic's unsupported claims about the associated costs should be viewed with considerable skepticism.

92/ See, e.g., Comments of Transwire Communications at 3-4 for a description of a potential service developed using alternative equipment.

93/ Order and Notice ¶ 171.

94/ We note that the New York Commission has approved interconnection agreements that
(continued...)

Parity is also an important concern here. The Commission reaches the correct tentative conclusion that ILECs must make available to CLECs, in a nondiscriminatory manner, all methods that ILECs or their affiliates use to provide DSL and other services to customers served by DLC loops.[95/] Where an ILEC or its affiliate uses alternative copper loops between the customer premises and central offices, it must make copper loops of comparable capability and quality similarly available to CLECs. Where an ILEC or its affiliate places DSL equipment in remote terminals, it must allow CLECs to place their own DSL equipment or use ILECs equipment to the extent that the CLEC preferred option is technically feasible.[96/] In this latter case, ILECs or their affiliates would not be allowed to collocate DSL equipment in remote terminals, while offering CLECs only a "home-run" copper-based option, particularly if this result would cause price or performance differences between these alternative loop configurations.[97/] The provisioning intervals involved, moreover, should be identical for ILECs, their affiliates, and CLECs alike.

The Commission seeks comment on the need for national standards pertaining to the management of loop spectrum.[98/] NTIA believes that national standards bodies can play an important role in developing guidelines, industry best practices, and equipment that will allow competing advanced services to be provided over common loop facilities. As a general rule, the Commission should strongly encourage national standards bodies to resolve important technical issues related to the deployment of advanced services in a timely fashion and in a manner that would obviate the need for Commission action.

In this instance, the Commission should press the industry to move quickly to develop the standards necessary to enhance competitors' opportunities to deploy advanced services, at least in part, over unbundled ILEC loops.[99/] For example, new industry standards, guidelines,

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94/ (...continued from preceding page)
define subloop unbundling arrangements and that Ameritech has offered to provide alternative copper loops where available. See Comments of the New York Department of Public Service at 12; Comments of Ameritech at 15. See also Comments of AT&T Corp. at 69-70 for a list of unbundling decisions by State Commissions.

95/ Order and Notice ¶ 172.

96/ Parity concerns clearly dictate that the ILEC should not be permitted to take all available space in the remote terminal.

97/ See, e.g., the undesirable hypothetical situations posed in Comments of AT&T at 52, 74.

98/ Order and Notice ¶¶ 160-161.

99/ Ameritech notes that the T1E1.4 Working Group is actively developing an ANSI
(continued...)

and practices should be designed to reduce the potential interference among services that travel over wire pairs in common binder groups.[100/] The Commission should require ILECs to manage their unbundled loop assignments in a non-discriminatory manner so that competitors, ILECs, and their affiliates will have an equal chance of receiving loops of similar quality.[101/]

III. Conclusion

NTIA believes that recommendations discussed above will give ILECs a fair opportunity to market advanced services in competition with their less regulated rivals, and foster greater competition for advanced and other local telecommunications services. Given the dynamic nature of the underlying technologies and the relevant service markets, the Commission should reexamine its regulations and policies in this area periodically. Section 706 directs the Commission to conduct inquiries concerning the availability of advanced services to all Americans on a regular basis.[102/] NTIA recommends that the Commission commence the next inquiry no later than 18 months after the termination of this proceeding.

99/ (...continued from preceding page)
standard for local loop spectral compatibility. Comments of Ameritech at 27.

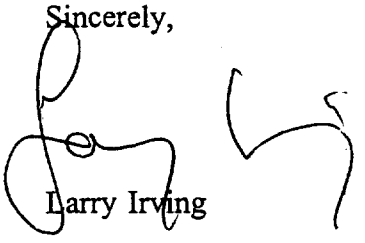
100/ For discussions of interference potential, see, e.g., Comments of Bell Atlantic at 48-49; Comments of AT&T Corp. at 60-61.

101/ The Commission also asks for comment on whether different carriers' services can be carried over the same loop. See Order and Notice ¶ 162. We believe that carriers should be free to develop voluntary arrangements to carry other carriers' services over common loop plant. Thus, an ILEC should be free to engineer its plant to carry services of a different carrier over that shared loop. Correspondingly, a CLEC should also be free to carry ILEC services over a shared unbundled loop controlled by the CLEC, if such an arrangement is mutually desirable. To the extent that an ILEC and its affiliate enter into a loop sharing arrangement, a CLEC should be able to avail itself of an identical arrangement with that ILEC.

102/ See 47 U.S.C. § 157 note.

Thank you for your consideration of these views.

Sincerely,



Larry Irving

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Lawrence Strickling, Chief, Common Carrier Bureau